

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Jonathan Lowthert et al.

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Interruptions

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Commissioner for Patents

P.O. Box 1450

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APPEAL BRIEF

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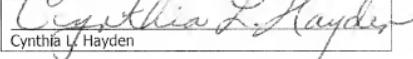

Cynthia L. Hayden

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REAL PARTY IN INTEREST

The real party in interest is the assignee BlackArrow, Inc.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-28 (Rejected).

Claim 29 (Canceled).

Claims 30-34 (Rejected).

Claims 1-28 and 30-34 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

1. A method comprising:
 - allowing the use of content on a content receiver;
 - collecting information about web sites visited by a user of said receiver (Fig. 4, 82) (Specification at page 13, line 26 to page 14, line 5);
 - said receiver receiving, from a remote processor-based system, a first subset listing of advertising resources (Fig. 4, 86) (Specification at page 15, line 24 to page 16, line 4);
 - automatically and selectively choosing, on said receiver and without user intervention, an advertising resource from the first subset listing based at least in part on said web sites visited by the user, to compile a second subset listing of advertising resources (Fig. 4, 90) (Specification at page 17, lines 5-20); and
 - capturing an advertisement listed on the second subset listing of advertising resources to store the advertisement on said content receiver (Fig. 4, 92) (Specification at page 17, lines 21-22).

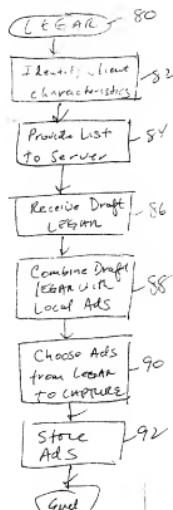


Figure 4

11. An article comprising a medium for storing instructions that enable a receiver to:
allow the use of content on the receiver;
in response to detecting a pause in content usage, automatically interrupt the use of the content;
while said content usage is paused, enable the receiver to temporarily replace the content with advertising;
collect information about web sites visited by a user of said receiver (Fig. 4, 82) (Specification at page 13, line 26 to page 14, line 5);
receive, from said remote processor-based system, a subset listing of advertising resources (Fig. 4, 86) (Specification at page 15, line 24 to page 16, line 4);
selectively choose, without user intervention, an advertising resource from the subset listing based at least in part on said web sites (Fig. 4, 90) (Specification at page 17, lines 5-10); and
capture an advertisement corresponding to the chosen advertising resource to store the advertisement on said content receiver (Fig. 4, 92) (Specification at page 17, lines 21-22).

21. A system comprising:
a receiver (Fig. 1, 16) that receives the transmission of content, said receiver including a shell (Fig. 1, 22) to enable the use of content to be paused and temporarily replaced with a previously stored advertising (Specification at page 6, lines 6-19); and
storage (Fig. 1, 20) coupled to said receiver storing instructions that enable said receiver to determine information about a characteristic of the receiver hardware, receive, from a remote processor-based system, a first subset listing of advertising resources, use the information to automatically and selectively choose a subset of advertising resources from the first subset listing, and capture the advertisements corresponding to the subset of advertising resources to store the advertisements on the receiver (Specification at page 13, lines 7-20, page 16, lines 1-12).

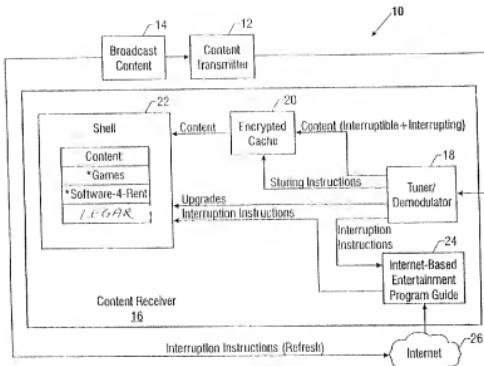


FIG. 1

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUNDΣ OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1, 2, and 7-10 are unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering.
- B. Whether claims 3-6 and 33 are unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering and further in view of Thomas.
- C. Whether claims 11-20 and 34 are unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering and Thomas.
- D. Whether claims 21-28 and 30-32 are unpatentable under 35 U.S.C. § 103(a) over Picco in view of Thomas and Sahai.

ARGUMENT

A. Are claims 1, 2, and 7-10 unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering?

The office action suggests that Thomas teaches that one could collect the information about non-program guide applications. But collecting information about what non-program guide application a user uses does not provide any basis for suggesting collecting information, not about the application programs that the user uses, but, instead, the web sites are actually visited. It would seem that getting information about the web sites that are actually visited would be much more useful in determining which advertisements to play than would be information about what applications the user uses. Thus, if the claimed invention was so obvious, it would seem hard to understand why Thomas was collecting information about the applications the user was using, instead of the web sites.

The fact that cookies are well known, even if true, does not meet the limitations of the claim. Cookies are not used to determine which web sites a user visited and they are not used to select which advertisements to play. To the extent either of these features are suggested to be well known, the Examiner is respectfully requested to cite a reference. Instead, the Examiner has only indicated that official notice was taken that, at the time of the invention, one could monitor a user's Internet usage, including web site user visits by a cookie. This is a bit of a twist on the way cookies work. The cookies are simply placed on the user's computer. They are not a way to monitor which web sites the user has visited.

As explained in the Microsoft Computer Dictionary (Evidence Appendix), when a user returns to the same web site for which he received a cookie, the browser sends a copy of the cookie back to the server. The cookies are used to identify users, to instruct the server to send the customized version of the web page, and to submit account information for the user and for other administrative purposes. See Microsoft Press Computer Dictionary, 3rd Edition, definition of cookies. Thus, there is no indication that cookies are used to monitor what web site the user visits. To the extent this is the intent of the official notice, the Examiner is respectfully requested to cite a reference since the Examiner's understanding of cookie seems contrary to that of Microsoft in their dictionary.

Moreover, even if the Examiner was correct that cookies could be used to monitor usage of web sites, that still provides no reason to Thomas to use cookies to figure out what web sites were visited to decide what ads to play. The mere use of cookies does not implicate this usage of cookies, nor does Thomas suggest any reason to check what web sites were visited. Instead, Thomas suggests looking at what applications the user uses, which certainly would be a much less beneficial way to target advertising. Thus, it seems hard to believe that Thomas, who must have been aware of cookies, would have considered it obvious to use the web sites the user visited to target the ads.

Therefore, the rejection of claim 1 should be reversed.

B. Are claims 3-6 and 33 unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering and further in view of Thomas?

This rejection should be reversed for the reasons set forth in Section A.

C. Are claims 11-20 and 34 unpatentable under 35 U.S.C. § 103(a) over Picco in view of Eldering and Thomas?

This rejection should be reversed for the reasons set forth in Section A.

D. Are claims 21-28 and 30-32 unpatentable under 35 U.S.C. § 103(a) over Picco in view of Thomas and Sahai?

With respect to claim 21, there is no suggestion in any of the prior art of looking at the hardware on the system and using that to select advertisements. For example, in connection with the rejection of claim 33, it is suggested that Thomas '964 teaches collecting information about the user's usage of non-program guide applications. This hardly seems to provide any rationale to use information about the hardware resources on the receiver to do the same thing. The hardware feature of the claim does not appear to even be addressed and there is no basis in Thomas to analyze such a thing.

Therefore, the rejection should be reversed.

* * *

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: August 20, 2009



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CLAIMS APPENDIX

The claims on appeal are:

1. A method comprising:
allowing the use of content on a content receiver;
collecting information about web sites visited by a user of said receiver;
said receiver receiving, from a remote processor-based system, a first subset listing of advertising resources;
automatically and selectively choosing, on said receiver and without user intervention, an advertising resource from the first subset listing based at least in part on said web sites visited by the user, to compile a second subset listing of advertising resources; and
capturing an advertisement listed on the second subset listing of advertising resources to store the advertisement on said content receiver.
2. The method of claim 1 including combining the first subset listing of advertising resources with advertising resources previously available on the receiver and automatically and selectively choosing an advertising resource from said first subset listing or said advertising resources previously available on the receiver to create said second subset listing.
3. The method of claim 1 wherein collecting information includes monitoring the application software that the user has utilized.
4. The method of claim 3 wherein collecting information includes developing a database of information about activities undertaken by the user of the receiver.
5. The method of claim 4 wherein receiving the first subset listing of advertising resources includes receiving a first subset listing of advertising resources from a database of advertising resources stored on said remote processor-based system based on information about the user of the receiver.

6. The method of claim 5 wherein compiling said second subset listing of advertising resources to use to capture advertisements available on a remote processor-based system includes compiling said second subset listing based on the particular patterns of a user of the receiver.

7. The method of claim 1 including determining a characteristic of advertising and comparing said characteristic to information about the use of the receiver.

8. The method of claim 1 including storing a variety of content on the content receiver to select for play at any time.

9. The method of claim 1 including automatically replacing the content, other than advertising with advertising after allowing the content to be used for a predetermined amount of time.

10. The method of claim 1 including controlling the number of times a user may access content other than advertising that is stored on the receiver.

11. An article comprising a medium for storing instructions that enable a receiver to:
allow the use of content on the receiver;
in response to detecting a pause in content usage, automatically interrupt the use of the content;

while said content usage is paused, enable the receiver to temporarily replace the content with advertising;

collect information about web sites visited by a user of said receiver;
receive, from said remote processor-based system, a subset listing of advertising resources;

selectively choose, without user intervention, an advertising resource from the subset listing based at least in part on said web sites; and

capture an advertisement corresponding to the chosen advertising resource to store the advertisement on said content receiver.

12. The article of claim 11 further storing instructions that enable the receiver to store a variety of content on the receiver to select for play at any time.

13. The article of claim 11 further storing instructions that enable the receiver to monitor the activities of the user of the receiver.

14. The article of claim 13 further storing instructions that enable the receiver to develop a database of information about activities undertaken by the user of the receiver.

15. The article of claim 14 further storing instructions that enable the receiver to select advertisements stored on the remote processor-based system based on information about the user of the receiver.

16. The article of claim 15 further storing instructions that enable the receiver to compile a local electronic guide to advertising resources other than said subset listing to use to capture advertising available on a remote processor-based system.

17. The article of claim 11 further storing instructions that enable the receiver to determine a characteristic of advertising and compare the characteristic to information about the use of the receiver.

18. The article of claim 11 further storing instructions that enable the receiver to automatically replace content with advertising after allowing content to be used for a predetermined amount of time.

19. The article of claim 11 further storing instructions that enable the receiver to automatically determine at predetermined times whether to replace said content.

20. The article of claim 11 further storing instructions that enable the receiver to automatically compile a receiver-based database of advertising resources, said receiver-based database including a subset of selections from said subset listing.

21. A system comprising:
a receiver that receives the transmission of content, said receiver including a shell to enable the use of content to be paused and temporarily replaced with a previously stored advertising; and
storage coupled to said receiver storing instructions that enable said receiver to determine information about a characteristic of the receiver hardware, receive, from a remote processor-based system, a first subset listing of advertising resources, use the information to automatically and selectively choose a subset of advertising resources from the first subset listing, and capture the advertisements corresponding to the subset of advertising resources to store the advertisements on the receiver.

22. The system of claim 21 wherein said system is a television receiver.

23. The storage of claim 21 wherein said receiver automatically replaces the content with advertising after allowing content to be used for a predetermined amount of time.

24. The system of claim 21 wherein said receiver automatically determines at predetermined times whether to replace the content with advertising.

25. The system of claim 21 wherein the receiver enables a variety of content to be selected for play at any time.

26. The system of claim 21 wherein said storage stores instructions that enable the receiver to monitor the activities of the user of the receiver.

27. The system of claim 26 wherein said storage stores instructions that enable the receiver to develop a database of information about activities undertaken by the user of the receiver.

28. The system of claim 21 wherein said storage stores instructions that enable the receiver to access a database of available advertisements on a remote processor-based system.

30. The system of claim 21 wherein said storage stores instructions that enable the receiver to compile a local electronic guide to advertising resources to use to capture advertisements available on the remote processor-based system, said local electronic guide to advertising resources compiled without user intervention and including a second subset listing of advertising resources that is based on an activity of the user of the receiver to create a subset listing that is finer tuned than said first subset listing.

31. The system of claim 21 wherein said storage stores instructions that enable the receiver to access a database of available advertisements on a specialized, remote processor-based system.

32. The system of claim 31 wherein said storage stores instructions that enable the receiver to access a database of available advertisements on a remote processor-based system specialized for a language other than the national language spoken in the location of said receiver.

33. The method of claim 1 wherein collecting information includes collecting information about a characteristic of software that is present on the receiver.

34. The method of claim 1 including detecting a user-initiated pause in content usage and in response to detecting a pause in content usage, automatically interrupting the use of the content to temporarily replace the content with a previously stored advertisement, the place in the content where said pause occurs, if said pause occurs at all, not determined by a content provider.

EVIDENCE APPENDIX

Microsoft Computer Dictionary

Microsoft Press

Computer Dictionary

Third Edition

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Microsoft Press

where information is concerned, a changeover that affects form but not substance. Types of conversion include:

- Data conversion: Changing the way information is represented—for example, changing binary representation to decimal or hexadecimal.
- File conversion: Changing a file from one format to another. Another, more detailed, type of file conversion involves changing character coding from one standard to another, as in converting EBCDIC characters (which are used primarily with mainframe computers) to ASCII characters. *See also ASCII, EBCDIC*
- Hardware conversion: Changing all or part of a computer system to work with new or different devices.
- Media conversion: Transferring data from one storage medium to another—for example, from disk to tape or from 3.5-inch Apple Macintosh disk to 5.25-inch MS-DOS disk.
- Software conversion: Changing or moving a program designed to run on one computer to run on another. Usually this involves detailed (professional) work on the program itself.
- System conversion: Changing from one operating system to another—for example, from MS-DOS to UNIX or OS/2.

conversion table \kən'ver zhən tā'bēl\ *n.* A table listing a set of characters or numbers and their equivalents in another coding scheme. Common examples of conversion tables include ASCII tables, which list characters and their ASCII values, and decimal-to-hexadecimal tables. Several conversion tables are in Appendixes A–E.

converter \kən'ver'tor\ *n.* Any device that changes electrical signals or computer data from one form to another. For example, an analog-to-digital converter translates analog signals to digital signals.

cookbook¹ \koo'kōk\ *adj.* Of, pertaining to, or characteristic of a book or manual that presents information using a step-by-step approach. For example, a cookbook approach to programming might present a series of sample programs that the reader could analyze and adapt to his or her own needs.

cookbook² \koo'kōk'bōōk\ *n.* A computer book or manual that presents information using a step-by-step approach. Most often, *cookbook* refers to a programming guide, but it can refer to a book that shows how to accomplish specialized tasks in an application.

cooked mode \koo'kōd' möd\ *n.* One of two forms (the other being raw mode) in which an operating system such as UNIX or MS-DOS “sees” the handle, or identifier, for a character-based device. If the handle is in cooked mode, the operating system stores each character in a buffer and gives special treatment to carriage returns, end-of-file markers, and linefeed and tab characters, sending a line of data to a device, such as the screen, only after it reads a carriage-return or end-of-file character. In cooked mode, characters read from standard input are often automatically echoed (displayed) on the screen. *Compare* raw mode.

cookie \koo'kē\ *n.* **1.** A block of data that a server returns to a client in response to a request from the client. **2.** On the World Wide Web, a block of data that a Web server stores on a client system. When a user returns to the same Web site, the browser sends a copy of the cookie back to the server. Cookies are used to identify users, to instruct the server to send a customized version of the requested Web page, to submit account information for the user, and for other administrative purposes. **3.** Originally an allusion to “fortune cookie,” a UNIX program that outputs a different message, or “fortune,” each time it is used. On some systems, the cookie program is run during user logon.

cookie filtering tool \koo'kē' fil'tar'ēng tōōl\ *n.* A utility that prevents a cookie on a Web browser from relaying information about the user requesting access to a Web site. *See also cookie* (definition 2).

cooperative multitasking \kōōp'ərā-tiv mul tē-tā-skōōng, mul'tē-ta-skōōng\ *n.* A type of multitasking in which one or more background tasks are given processing time during idle times in the foreground task only if the foreground task allows it. This is the primary mode of multitasking in the Macintosh operating system. *See also background¹, context switching, foreground¹, multitasking, time slice.* *Compare* preemptive multitasking.



RELATED PROCEEDINGS APPENDIX

None